

46 Am. Jur. 2d Judges § 146

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

5. Prior Participation in, Connection with, or Knowledge of the Case or Parties as Grounds for Disqualification

a. Prior Participation in, Connection with, or Knowledge of the Case or Parties as Grounds for Disqualification, in General

§ 146. Knowledge of disputed evidentiary facts as grounds for disqualification of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  47(1), 47(2), 48

The statutes and canons of many states provide that a judge must disqualify him- or herself in any proceeding where the judge has personal knowledge of disputed evidentiary facts concerning the proceedings,¹ and such rules are embodied in the Code of Judicial Conduct,² and in the federal statute regarding the disqualification of judges.³ For instance, a judge must disqualify him- or herself where the judge obtains personal knowledge of disputed evidentiary facts through an unrecorded interview with a witness.⁴

On the other hand, the rule is not meant to preclude participation of a judge who has obtained knowledge of the case through prior judicial proceedings.⁵ Knowledge gained from the judge's discharge of his or her judicial function is not a ground for disqualification based on personal knowledge of disputed evidentiary facts.⁶ The phrase "personal knowledge of disputed evidentiary facts" refers to knowledge obtained extrajudicially rather than knowledge obtained in a judge's official capacity during the course of the proceeding.⁷

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Footnotes

- 1 U.S. v. Carlton, 534 F.3d 97 (2d Cir. 2008); Walsh v. Comey, 110 F. Supp. 3d 73 (D.D.C. 2015); Minks v. Com., 427 S.W.3d 802 (Ky. 2014); Robertson v. Gerakaris, 2015 ME 83, 119 A.3d 739 (Me. 2015), as corrected on other grounds, (Dec. 1, 2015); Scott v. State, 175 Md. App. 130, 926 A.2d 792 (2007).

A trial judge would not be disqualified on the basis that he had obtained knowledge of disputed evidentiary facts prior to a termination of parental rights hearing where a letter by foster parents describing the child as sick, hungry, and filthy did not convey any information to the judge not conveyed by independent evidence at the trial. *In Interest of W.S.M.*, 845 S.W.2d 147 (Mo. Ct. App. W.D. 1993).

A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(1).

For these purposes, "knowingly," "knowledge," "known," and "knows" mean actual knowledge of the fact in question, and a person's knowledge may be inferred from circumstances. A.B.A. Code of Judicial Conduct, Terminology.

28 U.S.C.A. § 455(b)(1).

As to disqualification under 28 U.S.C.A. § 455(b)(1) on the ground that a judge has knowledge of disputed evidentiary facts concerning the proceeding, see *Am. Jur. 2d, Federal Courts* § 93.

In re Marriage of Donley, 819 S.W.2d 98 (Mo. Ct. App. S.D. 1991).

Roe v. Dietrich, 310 Ark. 54, 835 S.W.2d 289 (1992); *Poorman v. Com.*, 782 S.W.2d 603 (Ky. 1989); *Fraidin v. Weitzman*, 93 Md. App. 168, 611 A.2d 1046 (1992).

Omega Engineering, Inc. v. Omega, S.A., 432 F.3d 437 (2d Cir. 2005); *Ferguson v. State*, 2016 Ark. 319, 498 S.W.3d 733 (2016).

U.S. v. Carlton, 534 F.3d 97 (2d Cir. 2008); *Poorman v. Com.*, 782 S.W.2d 603 (Ky. 1989); *Scott v. State*, 175 Md. App. 130, 926 A.2d 792 (2007); *In re T.L.S.*, 144 Vt. 536, 481 A.2d 1037 (1984).

As to the requirement that bias be extrajudicial, see § 127.

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